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JOHN CHIPMAN GRAY

JOHN CHIPMAN GRAY, Royall Professor Emeritus, died at Boston on February 25, 1915. He was born at Brighton, July 14, 1839, the son of Horace and Sarah Russell (Gardner) Gray, and after attending the Boston Latin School he graduated from Harvard College in 1859 and from the Law School in 1861. He studied for a third year at the Law School, received his A.M. in 1862, and immediately enlisted in the army, remaining until the end of the war. During his service he was Second Lieutenant in the Forty-first Massachusetts Infantry and the Third Massachusetts Cavalry, aid to General Gordon, and Major and Judge Advocate General of United States Volunteers on the staffs of General Foster and General Gillmore.

After the war he came back to Boston and took up practice, forming a partnership with John C. Ropes, an old friend and classmate in the Law School. Later, by the addition of William Caleb Loring (now Mr. Justice Loring of the Supreme Judicial Court), the firm became Ropes, Gray and Loring; and at the time of Mr. Gray's death it included, under the name of Ropes, Gray, Boyden and Perkins, eight of his former pupils, among them his son Roland, who graduated with distinction from College in 1895 and the Law School in 1898.

"He married in 1873 Anna Lyman Mason, a granddaughter of Jeremiah Mason."

His teaching work at the Law School began in 1869, before Dean

Langdell came from practice to the School. He was first appointed as lecturer, and this appointment was renewed in 1871 and again in 1872 and 1873. On March 18, 1875, he was made Story Professor of Law, and on November 12, 1883, Royall Professor of Law. He resigned on February 1, 1913, and became Royall Professor Emeritus. His term of service thus covered the whole development of the modern school, and every member of the present Faculty came under his instruction. He taught many subjects,—Bankruptcy and the Law of the Federal Courts, Conflict of Laws, Evidence, Constitutional Law, all branches of the law of Property, and Jurisprudence.

“With Mr. Ropes he edited the *American Law Review* for several years beginning with its foundation in 1866.” Thereafter he published several treatises of distinguished excellence. The first edition of his “*Restraints on the Alienation of Property*” was published in 1883, the second in 1895. The “*Rule against Perpetuities*” had three editions, in 1886, 1906, and 1915. Each was carefully rewritten, the third during the last two years of Mr. Gray’s life. “*The Nature and Sources of the Law*,” embodying the substance of lectures delivered at Harvard and Columbia, was published in 1909. He also published two editions of his collected “*Cases on Property*” in six volumes, beside articles in magazines and other writings.

His honors and responsibilities, public and private, were many. He was made Doctor of Laws by Yale in 1894, and Harvard in 1895; he was President of the Harvard Alumni Association; and he was a Trustee of the Museum of Fine Arts and of many great public and private trusts.

Mr. Gray’s life had many sides. Two especially concern the Law School, — his work as a writer and a teacher.

His plans for writing were stated in a letter to a friend not long before his death, with characteristic modesty and grace of phrase:

“Some fifty years ago I determined that I would do two things; first, write a book on the Rule against Perpetuities, which should be a model text-book; and secondly, write something on analytical jurisprudence; and I have had these objects in mind ever since. Of course, the cares of the world and the deceitfulness of riches and the lust of other things have choked the ‘word,’ but they have not entirely destroyed it. I may say that I have pursued at eve what I pursued at morn.”

His idea of a "model text-book" may be gathered from the preface to the "Rule against Perpetuities:"

"Such a book should deal with the whole of its subject, its history, its relation to other parts of the law, its present condition, the general principles which have been evolved and the errors which have been eliminated in its development, and the defects which still mar its logical symmetry, or, what is of vastly greater moment, lessen its value as a guide to conduct."

This nice balance of different elements illustrates the sense of proportion which was so conspicuous in Mr. Gray. Writing when the spirit of the time gave a great scholar like him every excuse for overweighing the historical side, he valued his scholarship only as it could serve the needs of his fellowmen. Adequate and illuminating as was his historical matter, it was always subordinated to his main end. Especially he never lost sight of the importance of order and system. As he once said in defending an author whose power of analysis helped atone for the weakness of his history, "Though God did not have Gray's Botany or Dana's Mineralogy beside him when he made the world, and even though they are not the cloudless mirror of the divine idea, yet they are useful to weak mortals."

Among the qualities which have given his work its place with the best law books in the language is his conciseness. Without making the attempt, it is hard to realize the skill needed to attain such lucidity and completeness in so small a compass. Any one can write a long book; short books like Mr. Gray's mean the life-long toil of a master. He knew the truth in Stevenson's exclamation: "There is but one art,—to omit. A man who knew how to omit would make an Iliad of a daily paper."

Another feature of his writings is what his half brother, Mr. Justice Gray, once called, in speaking of another, "that clearness of statement which was the result of clearness of apprehension." This is well shown in his treatment of analytical jurisprudence,—a subject in which a writer's head is so soon lost in the clouds that it is hard for him to keep his feet on the ground, much less follow a straight path and avoid the pitfalls of profitless logomachy and muddled abstraction. To Mr. Gray's common sense and clean-cutting mind these dangers were only a challenge, and throughout "The Nature and Sources of the Law" he unfailingly puts his deep-

est thought to the test of reality. The illustrations from the camp, the field, or the dinner-table which light up its pages happily distinguish it from other writings of its kind.

A distinguished style, spoken or written, was the natural product of a mind with the power to master his amazing learning without letting it master him. The world's best literature had become a part of him; and his reading seemed to include every time and every subject. Its range was little realized even by his friends. Those who knew how deeply read he was in theology might not suspect that exercises in the higher mathematics were a recreation of his summer holiday, or that the classics attracted him no less. I remember coming upon him one summer evening while he was entertaining his leisure with the *Odyssey*, and in answer to my questions I found that he was going through it for at least the third time. The classic training that enabled him to handle his Greek so lightly no doubt had much to do with the terse elegance of his diction; but it came also from the directness of his character. His hatred of sham or pretence in any form, his perfect lack of affectation or pose, even to himself, combined with his bright intelligence to produce an intellectual honesty that matched the soundness of his moral fibre. Small wonder, then, in these days of labored epigram, of slovenly and self-conscious attempts at distinction made to order, how telling was his plain English, used for no purpose except to express exactly an exact thought. Rigidly as he avoided conscious ornament, he could not escape the allusions and classic turns of phrase which sprang of themselves from a soil so cultivated. The grace and power of his style, as well as his habit of thought, are well shown in the attack in the preface to the "*Restraints on Alienation*" (second edition) upon doctrines offensive to his uncompromising sense of honesty. His discussion of teaching methods in 1 *Yale Law Journal*, 159, is another good specimen of his work.

Such qualities as these were bound to tell in his teaching. The daily intimacy of the classroom, under a system which keeps the instructor under fire and exhibits him in action, leaves nothing unrevealed. Weakness of intellect or character becomes as evident as tricks of manner. By the same token contact with a fine legal mind seeking nothing but the truth was a legal education and something more. His scorn of pedantry, his freedom from the least touch of self-consciousness, brought moral as well as intellectual stimulus.

He treated his pupils as fellow-students, working with him on an equal footing to get at the truth. By so doing he brought before them most effectively the vastness of the law, and he made this very thought, so apt to discourage a beginner, a source of inspiration; for as the student had long since learned that Mr. Gray could stoop to no pose, he was excited by the sense of really helping his master. He had other special gifts, too, to help him as a teacher. He understood men, — no doubt because of his own direct and manly nature. And he had a wonderfully swift and smoothly working mind. Among the teacher's pitfalls is the danger that after long reflection he can see the thing in only one way. His thought thus hardens into a rigid outline, and his very learning may increase his difficulty in dealing with a beginner who comes at the matter from an unexpected and unlawyerlike angle. The flexibility with which Mr. Gray met his questioner's mind, his interest in doing so, the ease and directness with which he followed out a new line of reasoning to a fruitful conclusion, make him a unique figure in the memory of thousands of grateful pupils. And their indebtedness to him is manifold. One of them, at least, found in a few words of parting advice to the third-year class more help than in any other single experience in the Law School.

Among all their memories of Mr. Gray the most grateful to his old students will be his affection for them. This was one of the great feelings of his life. Although he continued to practise while he taught (a thing made possible by what he described as his "very peculiar and very fortunate" relations with his partners, and his not less fortunate and peculiar mental gifts and methods of work), he always put the Law School first, and more than once thought of giving up practice for the same reasons which led him to decline the highest judicial office. The sign that told him it was time to give up teaching after more than forty years was that it was no longer a regret to reach the end of the teaching hour. What that hour had always meant before is best told in his farewell letter to his last class: "Property 3 has been a perpetual delight to me, never wearisome. I have always felt that on both sides it was not an attempt to show how much we knew, or how smart we were, but that we were fellow-students trying to get to the bottom of a difficult subject." These were the words of one whose restraints of conscience and temperament made it impossible to go in

expression a hair's breadth beyond the line of his exact feeling; and they find in the hearts of his pupils the same response as did the dedication of his book "to his old pupils, whose affectionate regard has been to him a life-long blessing, from their grateful master."

Ezra Ripley Thayer.

Dean Thayer's sketch of Mr. Gray makes it unnecessary for me to put in writing much that would naturally come to my mind, for Gray's learning, versatility, charm of manner, expression and character must have struck all with whom he came in contact as they have struck Dean Thayer. In adding a few words I can only hope by repetition and illustration to emphasize some of our colleague's characteristics, not to change or even add much to what the Dean has said.

When Gray died there passed from among us a man whose type has always been rare and is growing rarer. It is so difficult to achieve excellence even in one department that the old ideal of a rounded life and a broad intellectual outlook has been almost surrendered by men of serious purpose, as inconsistent with any plan for real accomplishment. Gray, however, found no inconsistency. He was at once a specialist in a narrow and difficult branch of the law, a lawyer in general practice, a man of affairs, a teacher, a writer, a well-read scholar in various fields with cultivated interests in letters and art and a man of the world by no means averse to mingling in congenial society.

I first met him in 1885, when I entered the Law School as a student, and the impression of his teaching is still fresh in my mind. He had in speaking, as in writing, the same excellent style, an easy, flowing, clear expression of his ideas, without preciosity or study for effect, yet by no means wanting in occasional verbal felicities. He taught in those years as he did thereafter, until the death of Professor Thayer in 1902, the Law of Property, — mainly Real Property. The topic seemed congenial to him and he made it interesting to the class. His courses were valued, and zealous preparation made for them. The first edition of his treatise on "Perpe-

tuities" was published while I was in the School and was received with much enthusiasm by the students. His little book on "Restraints on Alienation" had already been published.

When not teaching, most of the professors were withdrawn in the library stack, where students in those days did not much venture. Gray, however, sat at a large table in an alcove opening out of the students' reading-room. This fact and his friendly and helpful ways made him much resorted to by the students. Though he was actively engaged in practice in Boston, he generally spent four days of each week at the School. Much of the time while he was there I suppose he was working on business of his office. His partners doubtless enabled him to specialize his own work, so that much of it could be done in Cambridge.

An anecdote told me by a colleague relating to an incident, which occurred about this time, is worth preserving as showing Gray's interest in his students and his ability to give in a few words the necessary help.

One Christmas vacation a young student from the west, who was detained at the Law School during vacation because of his distance from home, was seeking to get an introduction to the Roman Law, though it was not a part of the school curriculum. With this in mind, he was reading Mackenzie's book on the subject. Gray, passing by, caught a glimpse of the title of the book, stopped and said simply, "Don't read that." The student replied, "What shall I read?" Gray inquired, "Do you read German?" and the student answering that he had some slight knowledge of the language, Gray went into the stack, secured a copy of Sohm's "Institutes," which had then recently appeared in German and had not been translated, set it down before the student, saying, "Read that," and went about his work. These few words were instrumental in giving a beginner a proper starting point for years of study of the Roman Law.

When I became a member of the law faculty in 1890 I met Gray, of course, more frequently and on a somewhat different footing, but he was always the same. His common sense was so great that one did not always appreciate how uncommon it was. He was never wordy or vague, and though generally having a clear idea of his own on a matter in hand, was by no means inhospitable to the ideas of others. His methods of work were admirable. He seemed never

in a hurry, but always making steady progress with whatever he had before him. His wonderful physique enabled him to pursue successfully his varied activities. After he retired from teaching in 1913 he told me that until he had passed the age of seventy he never saw any occasion to change the habits of life which he had formed at thirty; that he had been able to work as he liked, eat as he liked, smoke as he liked and go to bed only when he chose. A reasonable temperance doubtless guided him in these matters, but he certainly could and did frequently, if not habitually, work all day and read literature which was not generally of the lightest variety during a long evening.

At the death of Professor Thayer in 1902, Gray, while retaining his advanced course on Property, dropped his other two courses and took up the subjects of Evidence and of Constitutional Law, which Thayer had made his own. This change from his own specialty to another man's shows Gray's persistent desire for a broad field of knowledge. He was past sixty at the time, an age when most men are content to remain in the grooves they have worn for themselves. It was especially remarkable, since Gray's activities in Boston were increasing rather than diminishing. Ropes had died, and Loring had gone on the Supreme bench, and more heavy trusts had come into Gray's hands. Another striking illustration of the same tireless search for knowledge is his attendance eight years later on a course in Roman Law given by a junior colleague, — the same man to whom Gray had recommended Sohm's "Institutes," twenty years before. With all his activities, Gray carried out what he undertook. His judgment of his own capacity and possibilities was as sound as if he had been gauging another's, and wide as was the orbit in which he moved, it was justly calculated.

Shortly after Professor Thayer's death, a portrait of him was presented to the Law School, and Gray received it on behalf of the School. In the course of the few remarks he made upon the occasion he spoke somewhat as follows: "There is an old saying that 'manners makyth man,' and I have always thought that Professor Thayer had the best manners of any man I have ever known. He would have been at his ease if sitting at table between the Pope of Rome and the Czar of all the Russias, and he was equally at his ease in talking with the shyest of young men without condescension and without strained familiarity."

What Gray truly and gracefully said of his colleague might equally well have been said of himself. His simple, direct, and kindly manner was the same to everybody, and the form and substance of his speech was fit for any company. His large tolerance also makes his added words of Thayer applicable to himself.

"He was the best type of a New Englander, without the creaking of the joints that sometimes marks and mars that estimable personage. It has been said that the difference between a good Bostonian and a good Philadelphian is that the Bostonian thinks everything wrong that is not right, and the Philadelphian thinks everything right that is not wrong. In this matter, Mr. Thayer was of the Philadelphian school."

Though his success in the world of affairs, great as it was, might undoubtedly have been vastly increased had he given his whole time to practical matters, he never seems to have even considered surrendering his professorship. In the last conversation I had with him he said: "I cannot imagine any more delightful work than teaching intelligent young men things which you know and which they do not know but desire to know."

Early in the year 1913 he had a sharp illness, and never regained his physical strength, though his mind remained clear and active till the end. To many men who have enjoyed robust health and great capacity for work the sudden deprivation of these accustomed blessings comes with such crushing force as to be almost insupportable. Gray, however, showed the same calm philosophy which was characteristic of him throughout his life. To one who ventured a few words of sympathy for his lessened activity, he replied merely, "It is wonderful how the back accommodates itself to the burden."

The last time I saw him was but a few weeks before his death. He had then for months been unable to get about much, and except for a drive on pleasant days was mostly confined to his room. His manner, however, was the same as ever, his intellectual interests as keen; he was planning a little further revision of his lectures on Jurisprudence. He said nothing of his disabilities, nor betrayed by manner or expression that his lot had become a hard one. The courage he showed in the Civil War half a century before did not desert him.

Samuel Williston.

A typical man of law, on whose face wisdom, judgment, probity were joined with good sense, coolness and logical precision; this was Gray as we saw him first in the professor's chair, and we never needed to revise this impression. The qualities that further acquaintance showed us were the qualities of the man, — courtesy, kindliness, wit, consideration for others.

In those days, when Austin Hall was still very new, Gray had not yet accepted the study of cases as the basis of instruction. He gave out weekly a list of authorities to be consulted, and then in class lectured to us with a clearness, precision, and perfection of form that was all his own. His mind was well adapted to teaching law in this way: his sense of form and proportion, his skill in exposition, his certainty of using just the right word, made even *Formedon in Reverter* and the Statute of Uses as interesting as Ashwell's case or the "last clear chance." During the first ten minutes of a lecture he was in the habit of giving a summary of the preceding lecture, and these summaries were far from the least instructive parts of his lectures. It is hard to see how his method of instruction could have been improved by the use of a case book, though he himself was already coming to believe that the use of a case book was the only satisfactory method of study from the student's point of view. A few years later he prepared his own series of books, and he became one of the most vigorous and effective defenders of Langdell's system of instruction.

Probably his most striking characteristic as a lawyer and teacher of law was the authority with which he spoke. It never occurred to any of his students that there could be a doubt about his conclusions. His partner Ropes is reported to have said that "John Gray's mind is a logical machine; you put your facts in the hopper and the correct legal conclusion will come out." In his latter days, at least, more than one court of supreme jurisdiction seemed to hang upon his words with the same sense of conviction as if it had been his class in Property. His counsel was sought in all sorts of affairs. Testators and clergy accused of heresy, cotton mills and colleges, millionaires and poor widows in trouble, came to him for advice, and his opinion seldom proved wrong. It used to be said of his "Restraints on Alienation" that Gray lost a case and wrote a book to prove that the court erred. He perhaps lost other cases; *sed quære*.

The exact precision of his mental processes was illustrated in his lectures. Year after year he began and ended in precisely the same place. One mark in his case book served to mark the stopping place of each lecture, though he used the book for fifteen years. He lectured for two years, in the early seventies, on the Conflict of Laws. The manuscript of his lectures, written in his neat fine handwriting and tied with a blue ribbon, was marked at the end of each day's work, and the marks for the two years were the same.

He never seemed to us very young, and he never seemed to grow old. He lived to be the connecting link between the older faculty and the younger. The beginning of his service antedated by more than a score of years that of any of his colleagues. He had been the teacher of us all. Yet he had no characteristic of the last leaf. Though his voice was weaker, and his step had begun to halt, he was as wise and intellectually as virile in the last year of his service as in his first. As Dean Thayer has elsewhere called him, in noble phrase, he was "a rock of trust."

The characteristic of him that most clings in the memory, after all, is virility, — power of mind, power of body, power of character. There were giants in his generation; and about each of his qualities there was something immensely human. He was a man, and his like, take him for all in all, we shall never see.

Joseph H. Beale.